IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.2513 OF 2005

Neelaben Pravinchandra Shah, Indian Inhabitant, Residing at B/48, Baria Apartments, Marwadi Chawl, S.V. Road, Malad (West), Mumbai - 400 064 ..Petitioner.

V/s.

1. National Textile Corporation, (South Maharashtra) Limited, Unit: Tata Mills, Opposite Hind Mata Cinema, Dr. Ambedkar Road, Dadar, Mumbai - 400 014.

2. National Textile Corporation, (North Maharashtra) Limited, Unit: Tata Mills, Opposite Hind Mata Cinema, Dr. Ambedkar Road, Dadar, Mumbai - 400 014.

3. The General Manager and his Successors in office, Tata Mills Opposite Hind Mata Cinema, Dr. Ambedkar Road, Dadar, Mumbai - 400 014.

4. Rohit V. Vasavda 603, Nilanjana Apartments, Marve Road, Malad (West), Mumbai - 400 064.

5. Parasar P. Nanawati, Chandra Kiran, 4th Floor, S.V. Road, Malad (West), Mumbai-400 064.

6. Ramubhai J. Patel, Raman Laxman Chawl, Roomno.1, Tanaji Nagar, Dhobi Ghat, Bal Dongri, Malad (West), Mumbai - 400 097. ..Respondents.

Mr.P.M. Patel for petitioner.

Ms.Nandini Menon for respondent Nos.1 & 2.

Mr.T.R.Yadav for respondent Nos.4,5 & 6.

AND

WRIT PETITION NO.2868 OF 2005

1. Ramubhai J. Patel, Raman Laxman Chawl, Roomno.1, Tanaji Nagar, Dhobi Ghat, Bal Dongri, Malad (West), Mumbai - 400 097.

2. Parasar P. Nanawati, Chandra Kiran, 4th Floor, S.V. Road, Malad (West), Mumbai-400 064.

4. Rohit V. Vasavda 603, Nilanjana Apartments, Marve Road, Malad (West), Mumbai - 400 064. ..Petitioners.

V/s.

1. National Textile Corporation, (South Maharashtra) Limited, Unit: Tata Mills, Opposite Hind Mata Cinema, Dr. Ambedkar Road, Dadar, Mumbai - 400 014.

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3. The General Manager and his Successors in office, Tata Mills Opposite Hind Mata Cinema, Dr. Ambedkar Road, Dadar, Mumbai - 400 014.

4. Neelaben Pravinchandra Shah, Indian Inhabitant, Residing at B/48, Baria Apartments, Marwadi Chawl, S.V. Road, Malad (West), Mumbai - 400 064 ..Respondents.

Mr.T.R.Yadav for petitioner.

Ms.Nandini Menon for respondent Nos.1 & 2.

Mr.P.M. Patel for respondent No.4.

CORAM : J.P.DEVADHAR, J.

DATED : 29TH SEPTEMBER, 2006.

ORAL JUDGMENT

1. In both these two petitions, petitioners have challenged the common order of the Industrial Court dated 18th January, 2005 passed in Misc. Application (ULP) No.28 of 2000. By the said order, the Industrial Court has rejected the Misc.application filed by the petitioners seeking recovery certificate under section 50 of the Maharashtra Recognization of Trade Unions and Practice of Unfair Labour Practices Act, 1971 ('MRTU & PULP Act' for short). Since the issue raised in these petitions are common, both the petitions are heard together and disposed of by this common Judgment.

2. Prior to 1982 the petitioners were employed by Tata Mills Ltd. in different capacities. Tata Mills Ltd. was taken over by the National Textile Corporation under Textile Undertakings (Taking Over of Management) Act, 1983.

3. Alleging unfair labour practice, the petitioners had filed Complaint (ULP) No.334 of 1990 under Items 5 & 9 of Schedule IV of MRTU & PULP Act, 1971. The Industrial Court by its order dated 21st December, 1999

allowed the complaint and held that the respondents are guilty of unfair labour practice covered under items 4 & 5 of Schedule IV of MRTU & PULP Act, 1971. By the said order, the Industrial Court directed the respondents to provide work to the petitioners and also pay salaries with the attendant benefits from 1/2/1990 within two months from the date of the said order.

3. Challenging the aforesaid order, the respondents had filed Writ Petition No.1071 of 2000 and the same was dismissed on 5th June, 2000. Thus, the order passed by the Industrial Court on 21st December, 1999 has attained finality.

4. With a view to enforce the order of the Industrial Court dated 21/12/1999, the petitioners filed Misc.Application (ULP) No.28 of 2000 seeking recovery certificate under section 50 of the MRTU & PULP Act, 1971. By the impugned order dated 18th January, 2005, the Industrial Court dismissed the application. Challenging the aforesaid order, the petitioners have filed the present two petitions.

5. Mr.Patel, learned advocate appearing on behalf of petitioners submitted that once an order passed by the Industrial Court on 21/12/1999 has attained finality in the execution proceedings, it was not open to the

Industrial Court to go beyond the said order and reject the application. Relying upon an unreported Judgment of this Court in the case of **Mumbai Kamgar Sabha V/s. M/s. Purshottam Motor Co. & Ors. [Writ Petition No.2676 of 2002 decided on 7/6/2005]** and a Division Bench the Judgment of this court in the case of **Ultra Drytech Engineering Ltd. & Anr. V/s. Vaibhav Laxman Suravkar & Anr.** reported in **2005 1 CLR 26**, Mr.Patel submitted that the impugned order passed by the Industrial Court is totally erroneous and is liable to be quashed and set aside.

6. Ms.Nandini Memon learned advocate appearing on behalf of the respondents submitted that in view of the fact that the petitioners during the relevant period were gainfully employed elsewhere or owning a shop premises was sufficient to hold that the petitioners were not entitled to the relief claimed by them. Accordingly, it is submitted that the Industrial Court was justified in rejecting the Misc. Application filed by the petitioners.

7. Having heard learned counsel on both sides, I am of the opinion that the impugned order passed by the Industrial Court cannot be sustained, because, once an order is passed on 21/12/1999 to the effect that items 5 & 9 of Schedule IV of the MRTU & PULP Act,1971 are violated and the respondents are directed to reinstate the

petitioners with back wages from 1/2/1990 and once that order has attained finality, it is not open to the Industrial Court to reject the application made for enforcement of the order dated 21/12/1999 on the ground that the petitioners are not entitled to the amount in spite of the order dated 21/12/1999. Admittedly, the proceedings initiated under section 50 of the Act were in furtherance of the order dated 21/12/1999 and unless the order dated 21/12/1999 was modified or altered, it was not open to the Industrial Court in section 50 proceedings to hold that the order dated 21/12/1999 cannot be honoured. The powers of the Industrial Court under section 50 of the MRTU & PULP Act, 1971 are restricted to the quantum that is due and payable under the main order and the Industrial Court has no jurisdiction to go beyond that order.

8. In this view of the matter, the impugned order of the industrial Court dated 18th January, 2005 is quashed and set aside and the matter is remanded back to the Industrial Court to decide the Misc.Application (ULP) No.28 OF 2000 afresh and in accordance with law.

9. Accordingly, both petitions are allowed. Rule made absolute in terms of above with no order as to costs. The Industrial Court is directed to dispose of the Misc. Application (ULP) No.28 of 2000 as expeditiously as possible and at any rate within 6 months from today.

Sd/-

(J.P. DEVADHAR, J.)